

**Puerto Rico Department of Education
Request for Limited Waiver**

Exhibit J

PRDE submission to USAC (dated November 20, 2014)

From: Maribel Pico Piereschi [mailto:picopm@de.pr.gov]
Sent: Thursday, November 20, 2014 12:25 PM
To: mblackwell@usac.org
Cc: David Andalcio; cayer@usac.org; jwalsh@usac.org; eflock@usac.org
Subject: RESPONSE TO 2014 FUNDING REQUEST WAN SERVICES

Dear Mr. Blackwell,

Thank you for allowing PRDE this opportunity to provide additional information regarding the FY2014 funding request for WAN services.

Attached, please find a letter of response, plus referenced attachments.

Additionally, for reference, here is a link to a folder that includes the last response provided to SLD on this subject along with all related attachments: <https://www.dropbox.com/sh/iteyts2hhvd2jxz/AADN5mvfTYwFmtw1wReXqMtvva?dl=0>

Best Regards,

Maribel Pico

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November 20, 2014

Mel Blackwell, Vice President
Schools and Libraries Division
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

Re: Puerto Rico Department of Education, Funding Year 2014

Dear Mr. Blackwell:

We understand that the Puerto Rico Department of Education's (PRDE) application for funding for WAN connectivity for Funding Year 2014 (Form 471 No. 990161, FRN No. 2702074) is at risk of denial due to USAC concerns regarding PRDE's consideration of the cost of service to ineligible locations as part of the price category in its Bid Evaluation Matrix. The purpose of this letter is twofold: first, to rectify an incorrect response furnished to USAC on October 2, 2014; and, second, to provide additional information to demonstrate that although the Bid Evaluation Matrix did not include the cost of service to ineligible locations in a separate price factor, PRDE did select the vendor that provided the lowest cost proposal for eligible services to eligible locations.

I. Response to USAC dated October 2, 2014

As an initial matter, PRDE would like to correct our response to USAC dated October 2, 2014. In that response, we stated the following: "While we did fairly evaluate bidders based on the cost of eligible services throughout the bidding process, we also committed a *ministerial error* by inadvertently copying and pasting the total costs (eligible sites + ineligible sites) into our final Evaluation Matrix instead of the correct subtotal for the eligible sites only."

Since the submission of the October 2 response, we carefully re-reviewed all of the documentation relating to the bidding process for this application. Also, our E-rate consultants were able to communicate with one of their former contractors – Ms. Elaine Williams – who had primary responsibility for assisting PRDE during the 2014 bid evaluation process.¹ On November 17, 2014,

¹ Ms. Williams has not been affiliated with our E-rate consultants since June 2014. Thus, our consultants did not have the benefit of her recollection regarding this matter at the time of the October 2, 2014 response.

Ms. Williams stated, "the committee evaluated pricing for all PRDE entities," that is, the Evaluation Committee considered the cost of eligible services for all PRDE locations, including locations that were eligible and included on Block 4 for FY2014, and locations that were intended to be made eligible (such as through electrical upgrades) at some future time during the course of the multi-year contract. The intention was that, since only eligible services were considered, and since the temporarily ineligible locations were cost-allocated out of the Block 5 funding request, this would be compliant with program rules.

Because Ms. Williams has not been affiliated with our consultants since June 2014, we did not have the benefit of her recollection regarding this matter at the time of the October 2, 2014 response was prepared. However, we now understand that our inference that ministerial errors must have occurred in transcribing the WAN bid evaluation information onto a summary score sheet was incorrect. We truly apologize for the confusion this may have caused and appreciate this opportunity to rectify the situation.

II. Additional information regarding PRDE's selection of the vendor that provided the lowest cost proposal for eligible services to eligible locations

USAC guidelines regarding the selection of service providers indicates the following:

When an applicant examines and evaluates the bids received for eligible services, it must select the most cost-effective bid. The price of the eligible products and services must be the primary factor in the evaluation, but does not have to be the sole factor. Other relevant evaluation factors may include: prior experience including past performance; personnel qualifications including technical excellence; management capability including schedule compliance; and environmental objectives. Note that the most heavily weighted price factor cannot include ineligible costs, although those can be included in an evaluation as long as they are in a separate price factor that is weighted less heavily.²

The SLD web site further discusses the procedure for handling of services accessible from both eligible and ineligible locations:

Example 6: A Priority 1 service that is accessible from both eligible and ineligible locations

Assume that a single telephone service is accessible from both a school and an ineligible facility. Applicants can submit an estimate of the percent of use at each location in order to obtain funding for the eligible portion. Such an estimate must be reasonable and must be compared with actual statistical information once service takes place. A "true-up" may be attached to an invoice submitted on paper to reconcile any differences between the initial estimate and the actual usage figures.³

² See <http://www.usac.org/sl/applicants/step03/evaluation.aspx>.

³ See <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/cost-allocations.aspx>.

As demonstrated below, PRDE: (A) carefully evaluated the cost of eligible services; (B) actually selected the vendor that provided the lowest cost proposal for eligible services to eligible locations; (C) did not seek E-rate funding for ineligible locations; (D) cost allocated 100% of costs for ineligible locations; and (E) has not engaged in waste, fraud or abuse on this application. A denial of the application at issue would be disastrous for the children of Puerto Rico and would frustrate the President's goal of ensuring that 99 percent of American students can benefit from high-speed digital connections in teaching and learning. In addition, it would be difficult for PRDE to afford the complete payment responsibility due Puerto Rico economic situation.

Thus, if USAC is not persuaded by the information and documentation in this letter, and determines that the bid evaluation process used was not compliant, PRDE respectfully requests an opportunity to request a waiver from the FCC before a denial Funding Commitment Decision Letter is issued.

A. PRDE carefully evaluated the cost of eligible services.

It is PRDE's goal to bring as many of its currently ineligible schools up to the required standards to permit those locations to benefit from the E-rate program as soon as possible. The Request for Proposals (RFP) specifically required prospective bidders to specify the cost of providing service to eligible locations and, separately, the cost of providing service to ineligible locations for FY2014. The two responsive bids (AT&T and PRTC) on the WAN portion of the RFP complied with this requirement. Enclosed as Attachment A is AT&T's cost proposal, which identifies in Part I the cost of service to eligible entities and in Part II the cost of service to ineligible entities, as required by the RFP. Additionally, enclosed as Attachment B is PRTC's cost proposal, which also identifies in Part I the cost of service to eligible entities and in Part II the cost of service to ineligible entities, as required. The purpose of requiring bidders to break out the cost of providing service to eligible from ineligible locations was to ensure that PRDE would have the necessary information to evaluate the cost effectiveness of services that qualified for E-rate funding for FY2014 from those that did not, which PRDE would have to assume in their entirety.

We are cognizant that the Bid Evaluation Matrix does not separate the cost of eligible services to eligible locations from the cost of eligible services to ineligible locations. All of the services evaluated were eligible for E-Rate support per the 2014 Eligible Services List. PRDE cost-allocated the ineligible locations from its funding request. PRDE understood this to be correct procedure for this situation, consistent with the SLD website guidance noted earlier as well as trainings and other materials.

In case of any lingering ambiguity, cellular telephone service may offer a clarifying direct analogy. Bid evaluations for cellular voice service have never required that the potential for use from an ineligible location (such as a teacher's automobile en route to school) be factored into the bid evaluation matrix. Rather, such usage requires a cost allocation in the amount of funding requested in the Block 5 FRN. It should not matter whether a service is wired or wireless, so the same logic should apply here; and the vendor selection would be the same either way.

PRDE selected the vendor that provided the lowest cost proposal for eligible services delivered at eligible locations.

B. Documentation demonstrates that PRDE selected the vendor that provided the lowest cost proposal for eligible services at eligible locations.

PRDE received two responsive bids for the WAN services – one from AT&T and one from PRTC. Comparing both proposals (Attachments A and B hereto) for the cost of service to eligible entities, the documentation shows that PRTC provided the most cost-effective bid:

Bidder	Service to 1,245 Eligible Entities (annual extended) (including recurring charges with one-time installation)	Service to 1,245 Eligible Entities (4-year total) (Including recurring charges with one-time installation)
PRTC	\$7,563,864	\$30,255,456
AT&T	\$9,948,137	\$39,792,551

Based on these proposals, and looking solely at the cost of service to 1,245 *eligible locations*, it is evident that AT&T's cost proposal was \$9,537,095 – approximately 31.5 percent – higher than PRTC's. Therefore, as a factual matter, PRDE selected the most cost-effective bid with respect to *eligible locations*. Ultimately, the purpose of the rules regarding vendor selection is to ensure that applicants get the best possible prices for E-rate eligible services in order to make the best use of limited dollars. This was accomplished here.

C. PRDE sought E-rate funding only for eligible locations

The RFP sought bids for service to both eligible and ineligible locations to minimize the administrative burden and expenses associated with conducting competitive bidding procedures, so that the soon-to-be eligible locations could also be covered both by the same establishing 470, RFP and contract on future applications. However, PRDE was aware that it could seek E-rate support only for eligible locations. This is evident from the March 3, 2014 Meeting Minutes for FY2014. Specifically, Item 4, page 4 of the March 3, 2014 Meeting Minutes indicates:

Scope Clarification. Ms. Williams clarified a statement made in the past meeting about contract scope. She stated that there are 1245 eligible sites, and about 300 that are not. She explained that all of the sites are included in the Form 470, RFP (and contract), because the goal is to bring all of the remaining sites/schools up to eligibility during term of the contract. Therefore, in order to be eligible for E-Rate funding in the future, the ineligible sites must be included in the current competitive bidding process. As a result, the total annual contract pricing will be for all schools, **but that the actual FY2014 E-Rate application will only include eligible sites** -- the contract will include all sites to permit the Department to include sites brought into eligibility on subsequent applications, without re-bidding or having to amend the contract. If not handled this way, Ms. Williams explained that the Department would have to undertake a new competitive bidding process in order to apply for E-Rate funding for new eligible schools that are not included in the FY2014 E-Rate contract.⁴

⁴ The file name for the March 3, 2014 Meeting Minutes is: FY2014_Evaluation Committee Meeting Minutes_3.3.14_FINAL.docx.

The March 3, 2014 Meeting Minutes also confirms that PRDE was aware that unless and until ineligible locations became eligible for E-rate funding, it would have to bear 100 percent of the cost of service to ineligible locations. Specifically, Item 6 on page 5 of March 3, 2014 Meeting Minutes indicates:

Contract Scope. Ms. Williams described the difference in the total contract counts and the counts that will be ultimately included in the FY2014 E-Rate applications. Under the contract, **the vendor will invoice the Department for 10% of the pricing for eligible entities, and 100% for the ineligible entities.** She explained that while somewhat complex, the goal is to be clear that all schools are included in the contract, and as schools move into eligibility they will be added to the application.

This concept is also embedded in the contractual agreement between PRDE and the selected vendor dated March 25, 2014. Section 8.17 in the agreement (Attachment D hereto) includes the following representation and warranty from PRTC: “The SECOND PART [PRTC] further represents that ... (c) it will ensure that the services being provided through the E-Rate Program are limited to Eligible E-Rate services.” Furthermore, Section 9.1 in the agreement states that: “the FIRST PART [PRDE] shall only be responsible for its Non-Discounted Portion ... of the annual compensation and the cost of ineligible services payable to the SECOND PART each year of this Agreement.”

D. PRDE cost allocated 100 percent of the costs for the ineligible locations.

While all of the services are eligible, some of PRDE’s schools are not *yet* eligible recipients of funding in accordance with USAC’s determinations of E-Rate Readiness. These ineligible locations were cost allocated out of the funding request as suggested by **Example 6** (A Priority 1 service that is accessible from both eligible and ineligible locations) of **Methods of Cost Allocation** from

<http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/cost-allocations.aspx>

Based on the explanation provided by Ms. Williams (the former Lead E-Rate Consultant), PRDE understood the E-Rate program rules to mean that ineligible locations could be cost allocated out of the Block 5 request for funding for a contract for services that are all eligible. PRDE took care to request funding for only eligible services and to clearly separate the ineligible sites. It is also noted that the cost of WAN service was determined solely by bandwidth (speed of connections) and not by location. Hence the cost differentials across vendors would be consistent regardless of which sites were ultimately included in the application as E-Rate Ready.

Furthermore, as demonstrated in Section II.B above, this bid evaluation process yields the same vendor selection outcome whether all, some or none of the ineligible school locations are considered in tallying up the cost of services.

In this case, the cost allocation is 100% of the cost for the ineligible sites. The procedure might have been more readily apparent had the Block 5 FRN shown the full monthly recurring cost of WAN services for both ineligible and eligible locations and then shown the dollar cost allocation for the ineligible sites. The FRN as submitted included ONLY the costs for the eligible sites (an equivalent request). In fact, PIA Reviewers and the Client Service Bureau sometimes recommend that applicants pre-compute such cost allocations—offline—and then simply show the final, eligible cost in Block 5.

Multi-year contracts are almost always required for applicants to obtain broadband WAN services. Given the unusual circumstance faced by PRDE, that some sites were temporarily considered ineligible but would become eligible during the course of the contract, and given that the nature of the RFP and bids ensured that “cost of eligible services” scoring would inevitably yield the same results, with or without the temporarily eligible locations, the bid evaluation procedure used achieved the objectives of the program rules. At a minimum, it shows a good faith effort to conduct a fair and open competitive bidding process and unbiased vendor selection. Furthermore, since bids were based on bandwidth – not location – it would not yield a different result by virtue of adding or deleting schools striving to be deemed eligible. Had service to the ineligible sites not been considered at all, those schools could have been disallowed in subsequent years because they would not have been considered in making the original multi-year award.

E. PRDE conducted a fair and open competitive bidding process, and this application shows no evidence of waste, fraud or abuse.

PRDE is intent on bringing into the classroom the technology that our children need in order to succeed in the 21st Century. Throughout this application process, PRDE has fully cooperated with USAC and will continue to do so. There has not been the slightest suggestion that PRDE engaged in any form of waste, fraud or abuse during this application process. It would be a catastrophic loss for the children of Puerto Rico if funding were to be denied because of a perceived deficiency in the Bid Evaluation Matrix that did not and would not have altered the resulting vendor selection.

III. CONCLUSION

1. PRDE selected the vendor that provided the lowest cost proposal for eligible services, per program rules.
2. The March 3, 2014 Meeting Minutes establish that PRDE was aware that **it could not seek funding for ineligible locations**, which is also reflected in its contractual agreement with the winning bidder.
3. Consistent with this understanding, PRDE cost allocated 100 percent of the cost for the ineligible locations.
4. There has been no intent to violate the rules, “game the system,” or engage in wasteful conduct.

* * * * *

A denial of the application at issue would be disastrous for the children of Puerto Rico and would frustrate the President’s goal of ensuring that 99 percent of American students can benefit from high-speed digital connections in teaching and learning.⁵ The President has designated the E-rate program as the primary vehicle to accomplish this goal. While PRDE is intent on bringing into the classroom the technology that our children need in order to succeed in the 21st Century, it cannot do it alone; E-rate funding is absolutely essential. This is particularly true in Puerto Rico, where the median income is \$16,364, or 70 percent less than the U.S. median income of \$53,046.⁶ In fact, the economic situation in Puerto Rico is so precarious that late last year the Obama Administration named a team of Administration experts to work with Puerto Rico “to marshal existing federal resources” and assist Puerto Rico in “maximizing the impact of existing federal funds flowing to the Island.”⁷

⁵ See The White House, ConnectED: President Obama’s Plan for Connecting All Schools to the Digital Age, available at: http://www.whitehouse.gov/sites/default/files/docs/connected_fact_sheet.pdf.

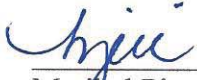
⁶ Income information from the 2008-2012 American Community Survey can be found here: http://www.census.gov/acs/www/data_documentation/summary_file/.

⁷ Supporting Puerto Rico’s Economic Development Progress, The White House, President Obama and the Hispanic Community, Nov. 21, 2013, available at <http://www.whitehouse.gov/blog/2013/11/21/supporting-puerto-rico-s-economic-development-progress>.

If USAC is not persuaded by the information and documentation in this letter, and determines that the bid evaluation process used was non-compliant, PRDE respectfully requests an opportunity to request a waiver from the FCC before a denial Funding Commitment Decision Letter is issued.

Please do not hesitate to let us know if you have any questions or concerns.

Respectfully submitted,



Maribel Pico
Chief Information Officer
Puerto Rico Department of Education
Cc: Eric Flock, Catriona Ayer, Jeff Walsh, David Andalcio

Attachment A – ATT's cost proposal
ATT_FY2014_WAN_INTERNET_finalpricing_v2 3-18-14.xls.pdf

Attachment B - PRTC's cost proposal
FY2014_PRT_wan_price-proposal.pdf

Attachment C – March 3, 2014 Meeting Minutes
FY2014_Evaluation Committee Meeting Minutes_3.3.14_FINAL

Dropbox link to supporting documents from October 2 response.⁸
<https://www.dropbox.com/sh/iteyts2hhvd2jxz/AADN5mvfTYwFmtw1wReXqMtva?dl=0>

⁸ In the body of the email please find the link to all the supporting documents previously submitted with the October 2, 2014 response